

MEMO

TO: Governor Steve Bullock
FROM: Galen Hollenbaugh, Commissioner, Department of Labor & Industry
Eric Strauss, Administrator, Employment Relations Division, Department of Labor & Industry
DATE: August 30, 2019
RE: Task Force on Integrity in Wage Reporting & Employee Classification in the Construction Industry

Purpose: Report on the Task Force Activity

Background:

Your Executive Order 4-2019, signed on April 15, 2019, established the Task Force and charged it with coordinating state and industry resources to identify inappropriate employment relationships, ensure proper tax withholdings, unemployment insurance contributions, and wage payments specifically within the construction industry.

The Executive Order named the Lieutenant Governor as the chair of the Task Force. Additional members included the Commissioner of the Department of Labor & Industry, the Director of the Department of Revenue, three representatives from the construction contractor community, and three representatives from organized labor.

The Task Force members are:

- Mike Cooney, Montana Lieutenant Governor, and Task Force Chair
- Galen Hollenbaugh, Commissioner, Montana Department of Labor & Industry
- Gene Walborn, Director, Montana Department of Revenue
- Mario Martinez, Pacific Northwest Regional Council of Carpenters
- Kim Rickard, Laborers' International Union of North America
- Jack McBroom, International Brotherhood of Electrical Workers
- Debora Poteet, Poteet Construction
- Doug Jackson, Jackson Contractor Group
- Bob Warren, Schellinger Construction

The Task Force held its first meeting on July 10, 2019, in Helena. The focus of the first meeting was to explain the purpose of the Task Force. Lt. Governor Cooney summarized some of the risks to employee misclassification. They include a lack of workers compensation coverage in the event of a workplace injury; no unemployment insurance during an economic downturn; fewer tax receipts due to unreported earnings; and unfair competitive advantages to companies who misuse independent contractors.

The Lt. Governor outlined the three main focal points that the task force will concentrate on:

1. Understand the impact from the regulatory perspective
2. Learn about current and planned compliance programs
3. Determine ways to improve the system going forward

During this meeting, the Task Force focused on the first duty outlined in the Executive Order - to review available data from state agencies to identify appropriate means to uncover potential misclassification. The group heard presentations surrounding the history and current status of Montana's Independent Contractor Exemption Certificate (ICEC) program; recommendations from a past Legislative Audit of the ICEC program; and the impact of misclassification on the Unemployment Insurance Program and other tax revenues.

The Task Force discussed the original purpose and intent of the ICEC program, details regarding the different ways misclassification can occur such as being misclassified as an independent contractor rather than an employee and classifying a worker on a prevailing wage job in an occupation that does not fit the type of work being performed.

The focus of the upcoming September 4, 2019 meeting will be on the second duty listed in the Executive Order. This meeting's agenda will include providing information and education to the group on DLI's existing compliance programs, then the group can begin to identify strategies and performance measures to improve the discovery of noncompliance.